IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S.ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 982 of 2005

Between:

M/s. Kalaimagal Transports,

rep. by its Managing Partner

R. Viswanatan, S/o. Rangaswamy,
R/o. 561, Sathy Road, Gandhipuram,

Coimbatore, Tamilnadu.

..... PETITIONER

AND

The Regional Transport Officer, Cuddapah.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the concerned records and quash the Demand Notice of the respondent issue in R.No. 9825/A2/2004, dt: 16-12-2004 and pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.ARIFULLA

Counsel for the Respondent: GP FOR TRANSPORT

The Court made the following :

ORDER:

The petitioner seeks to assail the demand notice dated 16-12-2004 issued by the respondent calling upon him to pay the higher rate of tax for the quarter ending with 31-12-2004 as detailed inter alia in the said notice.

The case of the respondent appears to be that the vehicle in question bearing No.TN 38/F 5335 was being run as a contract carriage and at the relevant time when it was intercepted 55 passengers were found in the vehicle and the vehicle was being plied without payment of tax and therefore, the impugned demand notice dated 16-12-2004 was issued demanding payment of tax and penalty in all Rs.96,680/-.

It is the case of the petitioner that the vehicle was registered in the State of Tamilnadu, in accordance with the provisions of the Motor Vehicles Act, to the State of Tamilnadu, and paid the tax on the vehicle in question which is valid upto 31-12-2004.

A perusal of the demand notice discloses that the petitioner was demanded to pay a higher rate of tax for the quarter ending 31-12-2004 as detailed above. The case of the petitioner squarely attracts the decision of a larger Bench of this Court reported in ***L.ROYAL REDDY v GOVERNMENT OF ANDHRA PRADESH***, wherein it was held that the authorities could not insist for payment of higher rate of tax except proceeding in accordance with the provisions contained in the Motor Vehicles Act. Further demanding tax and penalty under the very same order is not in accordance with law.

In view of the same, the writ petition shall have to be allowed in terms of

the Judgment of this court referred to supra. However, this will not prevent the authorities from taking appropriate action as is available under law in accordance with the provisions of the Motor Vehicles Act.

For the above reasons, the writ petition is allowed and the demand notice dated 16-12-2004 is hereby quashed with liberty to the respondent to take appropriate action as provided under law. It is open for the petitioner to apply for the refund of the tax paid already and release of the bank guarantee said to have been furnished and it is for the respondent to pass appropriate order therein within three weeks from the date of such application. No order as to costs.

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M.H.S.ANSARI, J

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T.CH.SURYA RAO, J

Date: 16-03-2005

Prv

To

1. The Regional Transport Officer, Cuddapah.

2. Two CCs to GP FOR TRANSPORT,

High Court of A.P., Hyderabad (O.U.T.)

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